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20 UNITED STATES DISTRICT COURT
21
22 NORTHERN DISTRICT OF CALIFORNIA
23
24 (OAKLAND DIVISION)

25 BNSF RAILWAY COMPANY,

26 Plaintiff,

27 vs.

28 ALAMEDA COUNTY, CALIFORNIA, et al.,

Defendants.

No.: Case No. 4:19-cv-07230-HSG

**JOINT STIPULATION REQUESTING
AMENDMENT OF ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY INUNCTION;
~~PROPOSED~~ ORDER**

Judge: Hon. Haywood S. Gilliam, Jr.
Crtrm.: 2

JOINT STIP. REQUESTING AMENDMENT OF
ORDER GRANTING PLAINTIFF'S MOTION
FOR PRELIM. INJ.; ~~PROPOSED~~ ORDER –
NO. 4:19-cv-07230-HSG

Pursuant to Rule 60(a) of the Federal Rules of Civil Procedure and Civil Local Rule 7-2, the parties hereby submit the following stipulation and proposed order:

**JOINT STIPULATION REQUESTING AMENDMENT OF ORDER
GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

WHEREAS, on December 20, 2019, Plaintiff BNSF ("BNSF") filed a Motion for Preliminary Injunction seeking a preliminary injunction against fifteen Defendant Counties ("Counties") (Dkt. No. 35) under 49 U.S.C. § 11501(b)(3), and a Proposed Order (Dkt. No. 35-4) which included, in relevant part, the following proposed language: "The Enjoined Parties are further ENJOINED through the pendency of this litigation until entry of a final judgment from taking any action to impose any interest or penalties, from taking any action to record or enforce a tax lien upon any property used or owned by BNSF Railway Company, or from taking any other action authorized by state law for delinquent or unpaid taxes under California law, *with respect to taxes in excess of the amounts described above.*" Plaintiff's Proposed Order Granting Motion for Preliminary Injunction at 3:13-17 (emphasis added);

WHEREAS, the reference to "taxes in excess of the amounts described above" in BNSF's Proposed Order refers to taxes in excess of the taxes due pursuant to the tax rate calculated and reported for each county by the California State Board of Equalization under California Revenue and Taxation Code section 11403;

WHEREAS, on April 8, 2020, the Court entered an order granting BNSF's Motion for Preliminary Injunction;

WHEREAS, in such order the Court ordered, in part, the following injunctive relief: "The Enjoined Parties are further enjoined through the pendency of this litigation until entry of a final judgment from taking any action to impose any interest or penalties, from taking any action to record or enforce a tax lien upon any property used or owned by Plaintiff, or from taking any other action authorized by state law for delinquent or unpaid taxes under California law." Order Granting Motion for Preliminary Injunction at 15:9-12 (Dkt. No. 65);

1 WHEREAS, by inadvertently omitting the italicized portion of BNSF's proposed order,
 2 the Order Granting Plaintiff's Motion for Preliminary Injunction is overbroad in that it prohibits the
 3 Counties from imposing any interest or penalties, from taking any action to record or enforce a tax lien
 4 upon any property used or owned by BNSF, or from taking any other action at all against BNSF for
 5 delinquent or unpaid taxes through the pendency of this litigation, regardless of whether such
 6 delinquency or failure to pay taxes relates to BNSF's tax liability at issue in this matter, or to taxes
 7 outside the purview of this litigation;

8 NOW THEREFORE, IT IS STIPULATED AND AGREED, by and between BNSF and
 9 the Counties, and subject to approval of the Court, that:

10 Pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, the Court amend its
 11 April 8, 2020, Order Granting Plaintiff's Motion for Preliminary Injunction to address the omission of
 12 essential language, where such omission effectively prohibits the Counties from taking action against
 13 BNSF for withholding taxes outside the purview of this litigation. The Parties request that such Order
 14 be amended to include the italicized language in the following paragraph at page 15, lines 9
 15 through 12: "The Enjoined Parties are further enjoined through the pendency of this litigation until
 16 entry of a final judgment from taking any action to impose any interest or penalties, from taking any
 17 action to record or enforce a tax lien upon any property used or owned by Plaintiff, or from taking any
 18 other action authorized by state law for delinquent or unpaid taxes under California law, *with respect*
 19 *to taxes for the 2019-2020 tax year and beyond on property that was assessed by the unitary method of*
 20 *valuation that are in excess of the taxes due pursuant to the tax rate calculated and reported for each*
 21 *county by the California State Board of Equalization under California Revenue and Taxation Code*
 22 *section 11403."*

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25 //

26 //

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Respectfully submitted,

Dated: April 21, 2020

OLSON REMCHO, LLP

By: /S/ Margaret R. Prinzing
Margaret R. Prinzing

Attorneys for Defendants County of Alameda,
County of Contra Costa, County of Fresno,
County of Kern, County of Kings, County of Madera,
County of Merced, County of Orange County
of Plumas, County of Riverside, County of
San Bernardino, County of San Joaquin, County of
Stanislaus, and County of Tulare

Dated: April 21, 2020

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Dated: April 21, 2020

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Attorneys for Plaintiff BNSF Railway Company

SIGNATURE ATTESTATION

I hereby attest that I have on file all holographic signatures corresponding to any signatures indicated by a conformed signature (/S/) within this e-filed document.

Dated: April 21, 2020

/S/ Margaret R. Prinzing

~~PROPOSED~~ ORDER

Upon presentation of the Parties' stipulation and good cause shown, the Court hereby amends the Order Granting Plaintiff's Motion for Preliminary Injunction to strike the paragraph currently appearing at page 15, lines 9 through 12 of the Order, and replace the paragraph with the following: "The Enjoined Parties are further enjoined through the pendency of this litigation until entry of a final judgment from taking any action to impose any interest or penalties, from taking any action to record or enforce a tax lien upon any property used or owned by Plaintiff, or from taking any other action authorized by state law for delinquent or unpaid taxes under California law, *with respect to taxes for the 2019-2020 tax year and beyond on property that was assessed by the unitary method of valuation that are in excess of the taxes due pursuant to the tax rate calculated and reported for each county by the California State Board of Equalization under California Revenue and Taxation Code section 11403.*"

Dated: 4/22/2020



THE HONORABLE HAYWOOD S. GILLIAM, JR.
UNITED STATES DISTRICT COURT JUDGE

(00407560-5)